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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,762	12/30/2003	Larry A. Kuhuski	LK-1-gw	9108
7590	05/28/2004		EXAMINER	
Michael I. Kroll 171 Stillwell Lane Syosset, NY 11791			PATEL, TAJASH D	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 05/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/747,762	KUHUSKI, LARRY A.
	Examiner	Art Unit
	Tejash D Patel	3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12/30/04.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-19 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Barker et al. (US 6,041,437). Barker et al (hereinafter Barker) discloses an apparel worn for protecting the user while sitting, col. 3, lines 41-50 but not limited thereto including long pants (A) that has a buttocks and upper thigh area as shown in figures 1 and 2. Further, a cushion (30), col. 4, lines 8-10 is disposed between an inner layer (40) and an outer layer (20). In addition, the cushion has a shape of the buttocks and the upper thigh area of the wearer as shown in figures 1 and 2. In addition, the cushion is sewn between the inner and outer layers, col. 4, lines 15-16.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2- 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of Bray (US 5,068,920). Barker discloses the invention as set forth above except for showing the cushion being bonded between inner and outer layers with an adhesive.

Bray discloses an apparel worn for protecting the user while sitting, but not limited thereto including long pants that has a buttocks and upper thigh area as shown in figure 1. Further, a cushion (36) having a shape of the buttock and the upper thigh is disposed between an inner layer (12) and an outer layer (38) that is bonded by an adhesive, col. 2, line 67 – col. 3, line 6

It would have been obvious to one skilled in the art at the time the invention was made to attach the cushion of Barker to the inner and outer layers by bonding using adhesive as taught by Bray, as an alternative but equivalent means of securing the layers relative to one another as known in the art.

With regard to claim 6, it would have been obvious to one skilled in the art to form the long pants of Barker when viewed with Bray into short pants since such construction is considered equivalent in the art.

5. Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of McCracken et al. (US 5,957,692). Barker discloses the invention as set forth above in paragraph 2 except for showing a unique number with a logo being disposed on the pants.

McCracken et al (hereinafter McCracken) discloses a plurality of unique numbers being attached to a pair of pants as shown in figure 12. Further, the numbers can include words, pictures, design, objects/logos, or combination thereof., col. 2, lines 31-35.

It would have been obvious to one skilled in the art at the time the invention was made to provide the pants of Barker with a unique number and logos as taught by McCracken which can be colored as desired, as a matter of design choice. Further, it is obvious that the one of the numbers can be drawn from of the plurality of number/pool of Barker when viewed with McCracken as required for a particular application or end use thereof.

6. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of McCracken as applied to claim 10 above, and further in view of Loeffelholz (US 6,175,963). Barker discloses the invention as set forth above except for showing a cap having a logo thereon.

Loeffelholz discloses a cap having a printed logo thereon, col. 5, lines 59-33 and as shown in figure 1.

It would have been obvious to one skilled in the art at the time the invention was made to provide the apparel of Barker when viewed with McCracken with a cap having a logo as taught by Loeffelholz. Doing so would allow the pair of pants to be worn as a set with the appropriate cap as required for a particular application thereof.

With regard to claims 13-14, Loeffelholz discloses a jacket having a printed logo thereon, col. 5, lines 59-33 and as shown in figures 9-10. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide the apparel of Barker when viewed with McCracken with a jacket having a logo as taught by Loeffelholz. Doing so would allow the pair of pants to be worn as a set with the appropriate jacket as required for a particular application thereof.

7. Claims 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of McCracken and Loeffelholz as applied to claim 14 above, and further in view of Bray (US 5,068,920). Barker discloses the invention as set forth above except for showing the cushion being bonded between inner and outer layers with an adhesive.

Bray discloses an apparel worn for protecting the user while sitting, but not limited thereto including long pants that has a buttocks and upper thigh area as shown in figure 1. Further, a cushion (36) having a shape of the buttock and the upper thigh is disposed between an inner layer (12) and an outer layer (38) that is bonded by an adhesive, col. 2, line 67 – col. 3, line 6

It would have been obvious to one skilled in the art at the time the invention was made to attach the cushion of Barker when viewed with McCracken to the inner and outer layers by bonding using adhesive as taught by Bray, as an alternative but equivalent means of securing the layers relative to one another as known in the art.

With regard to claim 19, it would have been obvious to one skilled in the art to form the long pants of Barker when viewed with McCracken, Loeffelholz and Bray into short pants since such construction is considered equivalent in the art.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (703) 306-9184. The fax phone number for this group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

May 24, 2004



TEJASH PATEL
PRIMARY EXAMINER